



## SMS GROUP AND VANACORE INTERNATIONAL ANNOUNCE A TRANSACTION FOR NEW INNOVATION AND GROWTH IN THE UNCLAIMED PROPERTY SERVICES MARKET

SMS Group, LLC (SMS) and Vanacore International Shareholder Services (VISS), leaders in the unclaimed property and owner location services industry, have announced a transaction which will combine two of the top firms in the marketplace and further solidify their strong presence in the major banking and financial centers on both the East and West coasts. SMS, based in New York City, specializes in search and compliance in the stock and retail financial service arenas. VISS, based in Sacramento, California, is a leading provider of lost shareholder services to the mutual fund industry.

The immediate benefits to clients include coast-to-coast offices – unique in the industry – and a pooling of expert resources and leading edge technology. This will ensure that challenges in the fast-changing market and regulatory environment for unclaimed property can continue to be met internally, of key importance to clients and the privacy of their shareholder and customer information.

SMS and VISS were pioneers in creating fully customized owner outreach programs for clients – resulting in increased response rates and faster processing – now becoming standard in the industry. Derek Vanacore, CEO for VISS, sums it up simply: “When you approach a ‘missing owner’ with respect and integrity, it reflects well on the client. The similar philosophies between SMS and VISS are one reason why we have been ‘friendly competitors’

for so long. Clients have often said it is tough to choose between us. Now, we’ve simplified that choice!”

“It is a natural partnership that creates one company with long standing tenure and expertise for our clients and new growth opportunities within the unclaimed property industry, which we are excited about creating together. We are just at the tip of the iceberg in discovering the long-term potential,” says Nick Nichols, Director of Sales and Client Services for SMS.

The combined companies will operate under a co-branding arrangement to acknowledge and leverage the considerable equities of both names within the industry. All principals of SMS and VISS will remain with the new entity. Key sales, customer service, and operations functions are already working together for a smooth transition into a single-source “Unclaimed Property Solution” with unique and proprietary global search and resolution capabilities.

Other details of the transaction and contact information can be found on a joint website: [www.sms-viss.com](http://www.sms-viss.com), or visit [www.smsgroupllc.com](http://www.smsgroupllc.com) or [www.vanacore.com](http://www.vanacore.com). The complete press release about the transaction may be found at [www.sms-viss.com](http://www.sms-viss.com).



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## CURRENT EVENTS

SMS was a sponsor for the Midwestern Securities Transfer Association (MSTA) annual Conference in Chicago, IL on September 26 and 27.

On September, 27, SMS attended the Northeast meeting for the National Investment Company Service Association (NICSA) in Boston, MA.

SMS will be attending the Securities Transfer Association (STA) conference from October 23-25 in Naples, FL.

At the regional conference for the Unclaimed Property Professionals Organization (UPPO) in Nashville, TN, Christa DeOliveira, SMS's Chief Compliance Officer, will speak on how to recover unclaimed property for your company. The conference dates are from November 13-14.

SMS will also be attending the joint National Association of State Treasurers (NAST) and National Association of Unclaimed Property Administrators (NAUPA) conference in San Antonio, TX from December 2-5.

## HOT TOPIC

### The Trilogy of Supreme Court Rulings on Unclaimed Property Priority Rules

By Christa DeOliveira

Before the Supreme Court ruling on *Texas v. New Jersey* in 1965, there was confusion about what jurisdiction had superior claim to unclaimed property resulting from holders at times facing multiple and even conflicting claims asserted by different jurisdictions. In due course, the Court heard three cases where they were asked to resolve interstate disputes over competing claims. The Court endeavored to estab-

lish a clear rule with ease of application to govern intangible property obligations, while eliminating uncertainty and the threat of expensive litigation that comes with it.

*Texas v. New Jersey*, 379 U.S. 674, 85 S.Ct. 626 (1965) in this case the Supreme Court was presented with a case of competing state claims and it set out to determine an equitable solution with ease of administration. Texas claimed the property in question on the basis it was the state with the most significant contacts since the property was on the books of two offices located in Texas. Additionally, some of the owners also resided there. So based on these facts Texas argued they should be permitted exclusive jurisdiction. New Jersey claimed the property on the basis of being the state of incorporation, while Pennsylvania contended its right to claim the property on the basis of principal place of business. Also, Florida claimed some of the property on the basis that the owners resided there.

The Court set out to resolve this interstate controversy and settle "once and for all by a clear rule which will govern all types of intangible obligations... and which all states may refer [to] with confidence". They rejected Texas's proposed contacts test, which had the underlying premise of the state with the most significant contact with the property should have jurisdiction over it. It was deemed this was not a workable test as it required examining the circumstances around each particular property and making subjective decisions, this could lead to uncertainty and result in expensive litigation.

New Jersey requested jurisdiction on the basis of corporate domicile (also known as the state of incorporation). While the clarity and ease of application were considered by the Court, they rejected this approach on principles of fairness. The Court found Pennsylvania's arguments of jurisdiction based on principal business location more persuasive as the company most likely received the most benefit from this state in the form of benefiting from its economy and laws. However, the Court also rejected this criteria as it would always raise the question of where a company's principal place of business or main office was located. The Court determined, "Any rule leaving so much for decision on a case-by-case basis should not be adopted unless none is available which is more certain and yet still fair."



Florida suggested that as debt is not the property of the debtor (holder), but rather the property of the creditor (owner), fairness requires the jurisdiction to escheat the debt should be turned over to the state of the creditor's last known address as evidenced on the books and records of the debtor. The Court choose to adopt a rule based on a factual issue and that leaves no undecided legal issues satisfied the requirement of a clear and simple rule. Also, it has the further benefit of distributing escheated property amongst states in proportion with the commercial activities of their residents which achieved an equitable solution for states.

Ultimately, the Court adopted the recommendations of the Special Master assigned to assist with the case. Each item of property is subject to escheat under the jurisdiction of the state of the last known address of the creditor based on the debtor's books and records. Where there is no last known address or the last address is in a state that does not provide for escheat, then the property should fall under the jurisdiction of the state of corporate domicile.

Today we refer to the directives set down in this ruling as the escheat priority rules for unclaimed property. The first priority is given to the state of the last known address, this is often referred to as the primary rule. When the owner's address or the owner is unknown, the second priority is given to the state of corporate domicile. The second priority is also given to the state of corporate domicile if there is not an escheat provision in the state of last known address. This is commonly referred to as the secondary rule.

*Pennsylvania v. New York* 407 U.S. 206, 92 S.Ct. 2075 (1972) in this case the Supreme Court revisited *Texas v. New Jersey*. Pennsylvania sued New York regarding the authority of the states to take custody of unclaimed funds resulting from the purchase of money orders. Pennsylvania asserted the state where the money order was purchased should have jurisdiction to take the funds. Furthermore, the state of purchase should be assumed to be the state of residence for the purchaser. While, New York argued the rules set forth in the *Texas v. New Jersey* ruling should be adhered to.

The Court again adopted the recommendation of a Special Master and applied the *Texas v. New Jersey* rule. Resulting in the unclaimed property related to the money orders being subject to escheat in the jurisdiction of the last known address for the creditor according to the books and records of the holder. In the absence of an address for the creditor, or if the state of last known address does not have an applicable escheat law, then the right to take custody would go to the state of corporate domicile of the holder. Pennsylvania asserted that a windfall would go to New York given most sellers of the money orders did not maintain address records for obligees, However, the Court addressed this and indicated, "nothing we say here prohibits states from requiring Western Union to keep adequate address records."

Subsequently, the Court's ruling was essentially overturned by Congress in 1974 when they passed legislation defining jurisdictional rules specifically for traveler's checks and money orders. This legislation established a place of purchase rule for these instruments; thereby, making these instruments subject to escheat based on where they are purchased.

*Delaware v. New York* 507 U.S. 490 (1993) in this case the Supreme Court was asked to look at what jurisdiction had priority to claim custody of unclaimed property. The Court reaffirmed the priority rules set forth in *Texas v. New Jersey*. Delaware sued New York asserting unclaimed security related distributions to brokers, banks and depositories were wrongfully escheated. Delaware argued that New York had improperly taken custody of these distributions as the owners were unknown; therefore, based on established priority rules the property should have been turned over to the broker's state of incorporation.

This time the Court rejected the Special Master's recommendation, and concluded once issuers have paid dividends, interest, or distributions they cannot be considered debtors. Payments



## GUEST ARTICLE

### Securities Transfer - Recent Developments

By Kevin Irwin

The securities industry is a fascinating one. The only constant is change. This is particularly true at the present time relating to securities transfer.

When the Securities Transfer Association, Inc. (STA), a 97 year-old, international securities industry advocacy organization, initiated its training program in September 2005, there was a two-fold purpose: (1) Stressing the importance of servicing and satisfying the investor; and (2) Identifying and reducing potential liabilities throughout the transfer process.

#### THE PLAYERS

Let's begin with a few definitions relating to the "key players" within the securities industry.

**Broker-** An agent, often a member of a stock exchange firm or an exchange member themselves, who handles the public's orders to buy and sell securities, for which they charge a commission.

**Custodian/Bank-** An institution legally charged with the responsibility of safeguarding the property of another.

**Dealer-** An individual or firm in the securities business acting as a principal rather than as an agent.

**Depository-** A clearing agency registered with the Securities & Exchange Commission which provides immobilization, safekeeping, and book entry settlement services to its participants.

**Depository Trust & Clearing Corporation (DTCC)-** A "limited purpose trust" owned by members of the financial industry. Its primary purpose is to reduce the cost of security services offered to the public by its participants.

**Transfer Agent-** A professional agency, usually a bank, employed by a corporation to handle the transfer of securities into and out of securityholder names. They also handle the payment of dividends, conversions of securities, mailings to stockholders, and maintenance of the list of registered shareholders for an issue.

Members of the securities industry, including The Depository Trust & Clearing Corporation, were instrumental in the development of the following two procedures.

#### DIRECT REGISTRATION SYSTEM (DRS)

For years, when an individual wished to be registered on the books of the corporation they invested in, they would have to request a certificate to be issued in their name. The process of requesting, issuing, mailing and storing this very important document was both costly and time consuming. One of the quoted figures, based on an industry survey, states that

going to an intermediary in nominee or street name relieve the issuer of being the debtor or holder, as the intermediary becomes the holder for property that is held in their own names for beneficial owners. The Special Master's proposal to have the distributions escheated to the issuer's state of principal offices was rejected. Once again, the Court adhered to the priority rules set down in *Texas v. New Jersey* and reaffirmed in *Pennsylvania v. New York*. To reiterate, the first priority is to the state of the last known address according to the holder's records, known as the primary rule. When the owner's address or the owner is unknown, the second priority is given to the state of corporate domicile. The second priority is also given to the state of corporate domicile if there is not an escheat provision in the state of last known address. This is commonly known as the secondary rule.

In this case New York's proposal was rejected. New York asserted the identified distributions were due to other brokers; therefore, they should be turned over to New York based on the primary rule. The Court held the state of incorporation for the intermediary "has the right to escheat funds belonging to beneficial owners who cannot be identified or located" based on the second priority rule. The ruling also clearly stated that states may not legislatively supersede the priority rules through state law.

In all three cases, *Texas v. New Jersey*, *Pennsylvania v. New York*, and *Delaware v. New York*, the Supreme Court was asked to resolve interstate disputes over competing claims to escheat intangible personal property. The Court established the priority rules that are used today in the first case and proceeded to reaffirm them in the subsequent two cases. The Court established a clear rule with ease of application to govern intangible property obligations. Additionally, the Court's decisions eliminated sub-jectivity, uncertainty, and the threat of expensive litigation.

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all of the previously mentioned procedures amounted to over \$250,000,000 annually. Approximately \$49,000,000 of this cost related to lost or stolen certificates. There had to be a better way.

The direct registration system (DRS) was the answer. "DRS" is an electronic book-entry service administered by DTCC that allows investors to hold security positions in their names, directly on the books of the transfer agent or issuer. "Profile" is an electronic communications link between DTCC's participants and issuers or their transfer agent. To be eligible to submit transactions through "Profile", participants, issuers, or their transfer agents must either participate in DTCC's Profile Surety Program or provide proof of similar coverage. Upon issuance of a surety number by DTCC's Surety Administrator, participants, issuers, or their transfer agents can submit and approve Profile transactions. The savings relating to lost or stolen securities is cause enough to do away with certificates!

### PAPERLESS LEGALS PROGRAM

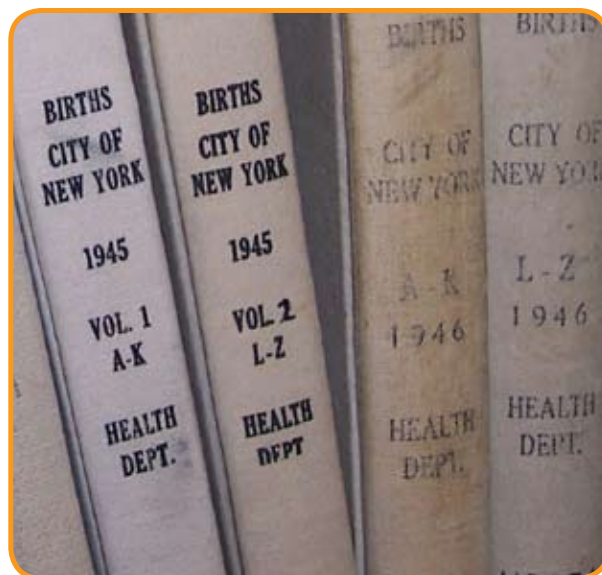
The goal of paperless legals was the elimination of transfer agent's examination, approval, and retention of documents that accompany requests for transfer. Instead, the burden and liability was placed on the guarantor.

While many investors believe their broker-dealer or custodian bank is the transfer agent for all of the securities they have registered in their name, they are actually incorrect. This misguided belief is based on the fact that they paid their financial advisor and received their securities from them and when they subsequently sold their holdings, they handed in the certificates and received payment directly from their broker-dealer or custodian bank.

Section 8-404 of the Uniform Commercial Code states that an issuer is liable for the wrongful registration or transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered pursuant to an ineffective endorsement. Section 8-407 goes on to explain that anyone acting as a transfer agent has the same obligations as the issuer to the holder or owner of the security.

In the past, to effect a transfer, the transfer agent required an endorsement by the registered securityholder(s) or individuals authorized to act on behalf of others. For years, only major commercial banks and members of the New York Stock Exchange were allowed to guarantee the signatures of registered securityholders. In addition, there were instances where many other certifications were required. Often a lot of cumbersome supporting documentation was needed.

Other financial industry groups found the aforementioned practice discriminatory. The Securities & Exchange Commission agreed and on February 24, 1992 and published rule 17ad-15. This rule states that a signature guarantee program is one of the terms and conditions of which a Transfer Agent reasonably determines to facilitate the equitable treatment of eligible guarantor institutions. The transfer agent has to possess and have available written standards for distribution.



The program known as "STAMP" (Securities Transfer Association Medallion Program) was developed to promote the prompt, accurate, and safe transfer of securities by providing the transfer agent with adequate protection against risk of financial loss if individuals have no recourse against the guarantor, and adequate protection against unauthorized guarantees.

The STA engaged a consultant to formulate an insurance based solution. Kemark Financial Services (KFS) proposed individual Surety Bonds that each guarantor would supply. In addition, an excess layer of protection was suggested in the unlikely event that a guarantor's surety bond limit was exhausted. Issuers and their transfer agents received the protection of a surety bond and if necessary the benefits of an excess liability insurance policy.

With the inception of the STAMP program, the guarantor now has the burden and associated liability of complying with Section 8-306 of the Uniform Commercial Code. This section states that any entity guaranteeing a signature of an endorsee of a security warrants that at the time of signing: (1) the signature was genuine; (2) The signer was an appropriate person to endorse; and (3) The signer had the legal capacity to sign. This understanding of Section 8-306 eliminated many of the former supplementary certifications required in the past. Further interpretations of the Code has led to the elimination of many of the documents, such as death certificates, corporate resolutions, and power of attorney papers that were previously needed.

There are many nuances, restrictions, and exceptions to the paperless legals program. For example, inheritance tax waivers are still required; regardless, the program has certainly simplified and increased the speed of the securities transfer process. Additional details and information may be obtained by accessing the Securities Transfer Association's website (STAI.org).

*Kevin P. Irwin is the originator, coordinator, and instructor of the STA's training program. He is widely recognized as one of the foremost trainers in the industry. Kevin has conducted over 800 programs nationally and internationally, at various associations, banks, brokers, corporations, depositories, exchanges, and transfer agents.*

## LEGISLATIVE UPDATES

### Summary of Selected Legislative Highlights

This web edition includes highlights of recently passed legislation impacting unclaimed property and gift cards; it does not convey legal advice. Previous legislative updates are available in the first and third quarter online editions of our newsletters at [www.msgroupllc.com/holders/news.html](http://www.msgroupllc.com/holders/news.html). (Budgetary legislation is only cited when there are peripheral provisions that might be of interest.)

#### ARIZONA

HB 2681 signed 5/17/07: Utilities are to transfer abandoned deposits to a Qualified Fuel Fund; these deposits will be used to provide assistance to eligible recipients.

HB 2781 signed 6/25/07: An appropriations bill that sets aside 12.5% of the dollar value of the properties recovered by unclaimed property contract auditors is appropriated to pay the contract auditor fees. This is estimated to be \$1,770,000.

HB 2786 signed 6/25/07: For the following properties the dormancy period has been reduced from 5 to 3 years:

- Principal on debt other than a bearer or an original issue discount bond of a business association is presumed abandoned after the maturity date and the interest on the debt is presumed abandoned after the payment date.
- Security related property, including dividends, profit, distributions, payments on principal or other sum held or owing by a business association is presumed abandoned after the date prescribed for payment, or delivery.

#### CALIFORNIA

SB 86 effective 8/24/07: The California State Controller's Office has put together a summary of this legislation, it can be reviewed at [www.sco.ca.gov/eo/pressbox/2007/pc0823/budtrailerfs.pdf](http://www.sco.ca.gov/eo/pressbox/2007/pc0823/budtrailerfs.pdf). Some highlights of the bill include, a statement that property received by the state shall not permanently escheat. It also proclaims the intent of the Legislature is to reunite unclaimed property with its owners. It outlines a more aggressive notification program: within 165 days from when a report is due and when remittance occurs a notice will be sent by mail to each person with property valued at \$50 or more. If the report includes an SSN, that SSN will be sent to the Franchise Tax Board to attempt to locate a current address. Notifications will be sent to the different address, if a different address is found or the address listed on the report if a different address is not provided. Additionally, other state or local agencies may furnish addresses or other information that could assist in identification or location of the apparent owner. Mailed notices will notify the addressee that property is being held which they appear to be entitled; the name and address of the holder and pertinent information regarding name and address changes; a statement that if a satisfactory claim is not pursued by the owner to the holder, then the property will be placed in the custody of the Controller and may be sold or destroyed and future claims for property or proceeds of sold property must be directed to the Controller.

Property will be held for 18 months before it is sold or destroyed. Securities will be held for 18 months, but no more than 20 after the final filing date. If securities have been sold the owner is

entitled to the net proceeds; whereas, if the securities have not been sold the owner is entitled to receive the securities. Once securities are transferred into the state's name pursuant to unclaimed property laws, the holder, transfer agent, registrar, or other person acting on behalf of the holder is relieved of all liability of every kind to any person including, but not limited to, any person acquiring the original certificate or a duplicate certificate for any losses or damages resulting to that person by the issuance and delivery to the Controller the duplicate certificate or registration of uncertificated securities. All escheated military items will be held in trust at the California State Military Museum and Resource Center.

Payments will be due no sooner than 7 months and no later than 7 months and 15 days after the final date for filing the report. The provision requiring EFT for cash amounts over \$20,000 and the associated 2% penalty remains in this legislation. It does allow for not paying or delivering property and making adjustments to a report for any owners that have established their right to receive property on a form to be prescribed or approved by the Controller.

Outside of the legislation, a new email subscription service has been established; individuals may subscribe to receive updates and law changes that impact holders, to subscribe complete the form at [www.sco.ca.gov/col/ucp/holder/listserv/index.html](http://www.sco.ca.gov/col/ucp/holder/listserv/index.html). Additionally, it is important to note, while California has passed this new legislation, as of yet this new approach has not been approved by the federal court and the temporary injunction described in the last edition of *The Unclaimed Property Ledger* has not been removed or modified.

#### CONNECTICUT

SB 229, effective 7/1/2007: The dormancy period for any money order issued or sold in Connecticut on which a business association is directly liable has been reduced from 15 to 7 years from the date of issuance.

#### FLORIDA

SB 672 effective 7/1/07: Credit balances held by a financial institution which result from the performance of or participation in check-clearing functions through a clearinghouse are not subject to the reporting requirements of unclaimed property.

SB 1638 effective 6/28/07: This legislation provides definitions for credit memos and gift certificates; these items as defined in §501.95 are not required to be reported as unclaimed property. Gift certificate sold for consideration may not have an expiration date or any type of post sale fees. Expiration dates of not less than 3 years are permitted for gift certificates given as a charitable contribution with no consideration given by the consumer when the expiration date is prominently disclosed in writing. Expiration dates may also be imposed for promotional programs such as employee incentive or consumer loyalty programs; certificates issued pursuant to these programs may not expire in less than 1 year and must be prominently disclosed in writing. The legislation specifically states unredeemed certificates or credit memos are "not required to be reported as unclaimed property." Consideration paid for unredeemed certificate and credit memos is the property of the issuer and is only subject to the rights of a purchaser/owner and is not subject to claims made by any state acting on behalf of the owner.

**HAWAII**

HB 1287 effective 4/20/07: This legislation eliminates the permanent escheatment of unclaimed property to the state by repealing §523A-3.5 of the escheat process.

**ILLINOIS**

HB 369 effective 1/1/08: Expiration dates earlier than 5 years and post sale fees on gift certificates are prohibited. Certificates issued prior to 1/1/08 subject to fees and expiration dates must contain a clear and conspicuous statement printed on the card stating there is a fee, how often it will be assessed that inactivity triggers the fee, and when the fee will be assessed. The statements must be visible prior to purchase, unless the card lists a toll free phone number with a conspicuous statement notifying that owners can call the number to retrieve the remaining balance and any applicable expiration date.

**INDIANA**

HEA 1210 effective 4/25/07: Amends the notification requirements for property paid or delivered to the attorney general. Also, removes the provision for charging a holder \$200 a day for audits that find reportable property and substitutes instead a "reasonable rate" as established by the attorney general.

**IOWA**

SF 41 signed 4/16/07: Defines mineral as meaning "gas, oil, and coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clays; steam and other geothermal resources; and any other substance defined as a mineral by a law of this state." Defines mineral proceeds and notes when payments are deemed abandoned, those payments and any payments thereafter become payable.

SF 202 signed 4/4/07: Increases the threshold requiring publication by the state Treasurer from \$50 to \$100. Modifies timing requirements for delivery of tangible property, such as safe deposit box contents, to be at the same time as filing or after at the direction of the Treasurer. The state and its employees are not liable to individuals proving superior right when claims have been paid in good faith. However, the paid claimant may be liable to any person proving a superior claim. Before claims can be paid, the Treasurer may require the claimant or owner of the unclaimed property to obtain a surety bond with terms and provisions acceptable to the Treasurer. The owner or claimant will be responsible for any associated premiums or expenses to obtain the surety bond.

**KANSAS**

HB 2246 approved 4/9/07: Appropriations bill authorizing communication in writing or correspondence to be conducted via email or other electronic communication if the recipient has agreed in writing to receive electronic correspondence regarding the property. The definition of interest bearing property expanded to include certificates of deposit that paid interest to the owner at the time they were reported to the Administrator. For claims on interest bearing property delivered to the Administrator interest will also be paid when the claim is approved. Simple interest will be calculated without compounding; the calculation will be based on the average monthly net earnings rate of the pooled investment portfolio for the time period the property has been held by the

Administrator. If the property has been held for over 5 years, then the 5 year average of the monthly net earnings rate of the pooled money investment portfolio will be applied.

**LOUISIANA**

HB 531 effective 7/9/07: Each fiscal year, \$15 million dollars from the sale of unclaimed property will be deposited into the Unclaimed Property Leverage Fund, within that fund a special account will be set up as the I-49 North Account. The source of monies in the I-49 North Account shall be 50% percent of the funds deposited in the Unclaimed Property Leverage Fund each fiscal year. Monies from the I-49 North Account can only be expended for transfer to the Louisiana Transportation Authority be used exclusively to match federal funds costs construction of I-49 North within Louisiana.

HB 677 effective 7/10/07: Property deposited with the Louisiana Political Museum and Hall of Fame that remains unclaimed for 10 years shall be considered abandoned and escheat to become the property of the museum, provided prescribed owner outreach requirements through publication have been met.

**MAINE**

LD 215, signed 2/13/07: A budget bill, transferring an Unclaimed Property Manager position to the Treasury Department Operations program from the Unclaimed Property program and upgrading the position to Director of Special Projects.

HP 187 signed 6/27/07: This legislation creates a financial literacy program funded by excess monies from the Unclaimed Property Fund.

**MARYLAND**

HB 1424 approved 5/8/07: Property in the possession of the Maryland Military Center for Military History for 7 or more years, where there are no known owners, a reasonable attempt to contact an owner has been unsuccessful, or the owner has refused to take possession of the property will become the property of the center, providing agreement and notification requirements outlined in this legislation are met.

**MINNESOTA**

SF 69 effective 8/1/07: This legislation provides definitions for gift certificate and affiliate. For gift certificates issued or sold on or after 8/1/07 expiration dates and service fees are prohibited. These restrictions do not apply when the issuer discloses any expiration date and fee associated with the gift certificate and they are:

- distributed to a consumer for loyalty, promotional, award, incentive, rebate, or other similar purposes when money or other tangible thing of value was not given by the consumer for the gift certificate or card;
- sold below face value or at a volume discount to employers or to nonprofit and charitable organizations for fund-raising purposes;
- debit cards or other legal access devices used to access a deposit account;
- issued by an employer to an employee in recognition of services performed by the employee;
- issued by financial institution and that can be used at multiple merchants; or
- are prepaid calling cards.

**MONTANA**

HB 43 signed 3/27/07: Phrasing regarding state warrants (checks) has been modified; state warrants are considered unclaimed property 3 years and 6 months after they have been stale-dated. Replacement warrants must be in the same form as the original. Issuing a replacement warrant requires a stop-payment on the original warrant. The replacement application for owners must contain an agreement to both indemnify and hold harmless the state and its officials and employees from any loss resulting in the replacement warrant. Warrants issued for wages must be stale-dated 6 months after the original issuance date.

HB 755 signed 4/27/07, retroactively effective to 9/30/05: A Gift certificate shall be presumed abandoned 3 years after December 31 of the year when it was sold. However, if redeemable in merchandise only, the abandoned amount is considered to be 60% of its face value. A gift certificate is not presumed abandoned if it was sold by an issuer that in the past year sold no more than \$200,000 in gift certificates. This threshold amount must be adjusted by November each year by a prescribed inflation factor. The amount considered abandoned is the value of gift certificates greater than the threshold.

**NEVADA**

AB 279 effective 10/1/07: It is a deceptive practice if service fees are imposed on gift certificates on the basis of inactivity, unless the duration of inactivity is at least 3 continuous years. The provision of service fees not exceeding \$1 per month, has remained unchanged. Gift certificates with an expiration date are presumed abandoned on the expiration date, 60% of the unredeemed value is subject to escheat. For gift certificates where the issuer does not collect and maintain the name and address of the owner, the address of the owner shall be considered to be the Office of the State Treasurer. Proceeds from abandoned gift certificates must separately be accounted for in the Abandoned Property Trust Fund and annually must be transferred to the newly created Educational Trust Fund. These monies may only be expended for educational purposes.

SB 103 approved 5/21/07: This legislation repeals the existing Uniform Disposition of Unclaimed Property Act and replaces it with the updated and revised Uniform Unclaimed Property Act (1995), as such there are many changes. This summary provides significant highlights.

This legislation codifies priority rules established by the Supreme Court in *Delaware v. New York*, *Pennsylvania v. New York*, and *Texas v. New Jersey*. Unclaimed property is subject to escheat to Nevada if the last known address of the apparent owner according to the holder's records is in the state; the holder's records do not reflect the last known address of the apparent owner and the holder is domiciled in Nevada or is a governmental agency of Nevada; the last known address of the apparent owner on the holder's records is in a state that does not provide for escheat of the property and the holder is domiciled in Nevada; or the last known address of the apparent owner on the holder's records is in a foreign country and the holder is domiciled in Nevada. Additionally, the legislation adds that if the transaction out of which the property arose occurred in Nevada, the holder is domiciled in a state that does not provide for the escheat of the property and the last known address of the apparent owner is unknown

or does not provide for the escheat of the property, then the properties also fall within Nevada's jurisdiction.

Holders may only deduct charges from property presumed abandoned if there is a valid and enforceable written contract which provides for charges, the holder regularly imposes the charges, and they are not regularly reversed. Also, the amount of the deduction must not exceed \$5 per month. The record of issuing a check or similar instrument is prima facie evidence of an obligation. The burden of proof of the existence and amount of property is satisfied by showing its issuance. As a defense a holder may prove payment, satisfaction, discharge, and want of consideration.

Holders of property presumed to be abandoned shall report to the Administrator. The requirements of the report are outlined. Items valued under \$50 should be reported in aggregate. Reports are due before November 1 and insurance companies are required to report before May 1. Due diligence is required for properties of \$50 or more, not more than 120 days or less than 60 days before filing the report. Additionally, the holder is required to include an affidavit filed with a report stating due diligence was conducted. When 15 or more items are to be reported, the report shall be filed electronically. The reported property shall be paid, delivered or cause to be delivered with the report. However, if property is a renewable deposit and deliver would result in the owner sustaining a penalty or forfeiture, then the timing of compliance is extended until the penalty or forfeiture would not happen. Tangible property resulting from a safekeeping depository, such as a safe deposit box, may not be delivered until 60 days after filing the report. Holders, issuers, transfer agents, or other people acting on behalf of the issuer to transfer securities to comply with this act are indemnified against claims. Upon payment or delivery of property, the state assumes custody of the property and assumes safeguarding responsibilities and a holder that pays in good faith is relieved of all liability. Holders shall maintain the records corresponding with filed reports for 7 years.

The state's publication requirements are outlined, both for owner notification and publishing notice of sale. As are holder reimbursement requirements. The legislation outlines situations and requirements when property paid or delivered to the Administrator may be recovered by another state. For safekeeping property the state may deduct sales costs and the holder is entitled to be reimbursed for any associated with the cost of opening a lien and any unpaid rent and storage charges when the property is liquidated. Owners are entitled to receive any income or gain realized on property at or before liquidation while property is in the custody of the state.

The legislation removes the former criminal penalties for noncompliance and adds provisions imposing civil, monetary penalties for holders that fail to comply. They include 18% per annum interest. Also, a civil penalty of \$200 per day for each day the report, payment or delivery is withheld, up to a maximum of \$5,000. Holders that willfully fail to report or deliver property, in addition to interest are subject to a civil penalty of \$1,000 per day, with a maximum of \$25,000, plus 25% of the value of any property that should have been reported. Similarly a holder that fraudulently reports will be subject to interest and a civil penalty of \$1,000 per day, with a maximum of \$25,000, plus 25% of the value of any property that should have been reported. The legislation allows the

Administrator to waive in whole or in part interest and penalties if the Administrator has good cause to believe the holder acted in good faith without negligence. The legislation also modifies some definitions.

SB 519 effective 7/1/07: This legislation renames the Abandoned Property Trust Fund as the Abandoned Property Trust Account and places the Account in the State General Fund, requires that the first \$7,600,000 remaining in the Account must be transferred to the Millennium Scholarship Trust Fund by the end of each fiscal year. Claims may not be satisfied from monies in the Millennium Scholarship Trust Fund. The Administrator is authorized to require reports to be filed electronically, in the manner determined by the Administrator. All proceeds from the sale of property must be deposited in the General Fund for credit to the Abandoned Property Trust Account.

**NEW MEXICO**

HB 127 effective 7/1/07: The dormancy period for gift certificates has been increased from 3 to 5 years. This legislation provides a definition for gift certificate. Gift certificates may not have an expiration date less than 5 years after the date of issue. If an expiration date is not conspicuously stated on a gift certificate, it is presumed to have no expiration date and shall be valid until redeemed or replaced. Other than an initial charge, which may not exceed the face value, fees of any kind in relation to the sale, redemption, or replacement of a gift certificate are not permitted. Violations will be considered an unfair or deceptive trade practice. Gift certificates do not include:

- certificates or store gift cards or general use prepaid cards distributed to a consumer for promotional, award, incentive, rebate, or other similar purposes without any money or other tangible thing of value being given by the consumer in exchange for the gift certificate;
- gift certificates, store gift cards, or general use prepaid cards sold below face value or at a volume discount to employers or to nonprofit and charitable organizations for fund-raising purposes;
- written promises, plastic cards, or other electronic devices that are used solely for prepaid telephone services; or are associated with a deposit, checking, savings, or similar account at a banking or other similarly regulated financial institution and that provide payments solely by debiting the related account; and
- gift certificates issued by financial institutions or licensed money transmitters.

**NEW YORK**

SB 96I approved 7/18/07: Addresses pre-need funeral plans. A definition for a pre-need administrator is provided. The legislation outlines requirements for owner outreach, outreach to funeral home directors, and making reasonable attempts to ascertain if an owner has died. Addresses how to handle both revocable and irrevocable agreements and how to determine and handle abandoned funds in a variety of circumstances. The legislation outlines a variety of dormancy periods dependent on situational specifics. Essentially, when it is determined funds have been abandoned, if the agreement is revocable the funds or surplus funds would need to be turned over to the state as unclaimed property; whereas, if the agreement is irrevocable then the funds or surplus of funds would be turned over to indigent care burial fund.

**NORTH CAROLINA**

SB 1517 effective 12/1/07: Provides definitions for gift card and maintenance fees and requires conspicuous disclosure of maintenance fees and prohibits them for at least one year after the date of purchase. Any sellers or issuers of cards violating this commit an unfair trade practice. The legislation exempts gift cards that are issued by a financial institution that are usable at multiple unaffiliated sellers of goods or services.

**NORTH DAKOTA**

HB 1058, signed 3/7/07: Definition of "Last known address" was removed. Publication requirement modified, requirement for consecutive weeks removed, it now simply reads two weeks.

**OREGON**

HB 2104 effective 1/1/08: The dormancy period for any demand, savings, or matured time deposit with a financial institution has been reduced from 5 to 3 years. The requirement for 3 months written notice before a holder may impose any fee or cease paying interest due to dormancy or inactivity has been changed from certified mail to first class mail. Renewable time deposits are still considered matured on the expiration date of their initial time period, unless the owner consents to a renewal at the time of renewal by communicating in writing, the financial institution has sent a written or electronic statement, and the statement was not returned. Also, if the delivery of the property would result in a penalty or forfeiture, then the delivery may be delayed until the time when there will be no penalty or forfeiture.

Additionally, the dormancy period has been reduced from 5 to 3 years for:

- checks, drafts, or similar instruments including a cashier's check and a certified check, for which a financial institution is directly liable;
- funds held or owing under a life or endowment insurance policy or annuity contract that has matured or terminated;
- stock, certificates of ownership, or other intangible equity ownership interests in a business association; and
- any dividend, profit distribution, interest, payment on principal, or other sum held or owing by a business association.

HB 2513 signed 7/16/07: Provides definition for a gift card excludes prepaid phone cards and prepaid commercial mobile radio services. Prohibits expiration dates, fees on cards and declining face value associated with the passage of time. However, cards with expiration dates may be sold if the card:

- has the phrase "EXPIRES ON" or "EXPIRATION DATE" when followed by the date on which the card expires and if this is printed on the card in 10 point font;
- is sold below face value; and
- the card does not expire for at least 30 days.

HB 5043 & 5049 effective 7/1/07: Both budget bills state "expenditures by the Department of State Lands for unclaimed property finders fees... are not limited."

**TENNESSEE**

SB 1763 effective 5/30/07: Pursuant to finding a need by the Commissioner of Health and subject to the approval of the Commissioner of Finance, some collected unclaimed property funds will be used for programs designed to enhance health access.

TEXAS

HB 3693 effective 9/1/07: Nonprofit electric cooperatives may deliver unclaimed property to a scholarship fund for rural students, to stimulate rural economic development, or to provide energy efficiency assistance to members. The comptroller shall prescribe procedures and forms for notice of unclaimed property, delivery of reported money to the respective options, how to file a claim, and procedures to ensure equitable participation by all nonprofit cooperatives in the state.

UTAH

HB 261, signed 2/27/07: Prohibits issuing a gift certificate that has an expiration date or deducts fees without disclosure on the packaging. Gift certificates that do not disclose expiration dates or fees, cannot expire or be subject to fees.

HB 219, effective 4/30/07: Reduces the abandonment period from 5 to 3 years for checks, bank drafts, deposits at a financial institution, equity securities and related property, mineral proceeds, and intangible property or income held in a fiduciary capacity. Proceeds from life or endowment insurance policies and annuity contracts are considered abandoned after 3 years. The report due date has been moved from before May 1 to before November 1. Reporting period revised to end on June 30. The aggregate threshold has been raised to \$50. Shares may be transferred to the state via electronic book entry, in addition to certificates. Publication requirements amended; requires Administrator to publish notice within 12 months of when the property was received and removes content requirements of publication. It permits Internet liquidation of unclaimed property and permits claims to be satisfied with the return of the property or proceeds from the sale. The Administrator may use his discretion to deduct reasonable fees and expenses incurred from the sale of property. Also, modifies the procedures and requirements for the sale of securities. The holder shall maintain a record of the names and last known addresses of owners for 5 years after the date the holder files the report. The legislation authorizes the Administrator to examine the records of an agent of a business or financial association pertaining to unclaimed property. The interest rate for failure to pay or deliver property has been changed to 12% per annum.

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